



**SAN JUAN PROJECT
EXTENDER RIGHTS TRANSFER AGREEMENT**

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The Parties

- Seller: **CITY OF FARMINGTON**
- Buyer: **ENCHANT ENERGY**
 - Enchant Energy Corporation (New Mexico)
 - Enchant Energy, LLC (Delaware)

Recitals

- The Recitals or WHEREAS clauses establish the background of the Agreement including the San Juan Generating Station (“San Juan Project” or “Plant”) Participation Agreement among Farmington and the other owner Participants:
 - Public Service Company of New Mexico (PNM)
 - Tucson Electric Power Company
 - Los Alamos County, New Mexico
 - Utah Associated Municipal Power Systems

ARTICLE I: Definitions

- The Definitions Section identifies the defined terms used in the Agreement
- Key terms including:
 - “Employees” are those Persons who are employees of the Plant immediately prior to the Closing

ARTICLE II: Purchase and Sale

What is Farmington transferring to Enchant?

- Farmington has the right as the “sole Extender” under Section 40B of the Participation Agreement (“Extender Rights”) to acquire the rights, title and interests of the Non-Extenders for zero dollars

What does “sole Extender” mean?

- Farmington is the only owner of the Plant that elected to continue operations of the Plant after June 30, 2022
- All other Participants are Non-Extenders

Extender Rights

- The transfer of the Extender Rights from Farmington to Enchant allows Enchant to “step into the shoes” of Farmington and negotiate directly with the four Non-Extender Participants to acquire their percentage ownership interests in the Plant in order to continue operating the Plant after June 30, 2022 (“Transfer Date”)
- The non-Extender Participants collectively hold 95% of the ownership interests in the Plant and will transfer their ownership interests to Enchant under Non-Extender Transfer Agreements that Enchant will negotiate
- Farmington will retain its existing 5% ownership interest in the Plant after June 30, 2022

Consideration and Public Purpose Benefits

What is Enchant paying Farmington?

- One Dollar (\$1) for the Extender Rights and such other good and valuable consideration including, but not limited to, the benefits to the City, the San Juan Region and the State resulting from the continued operation of the Plant after the June 30, 2022 Transfer Date

What are the public purpose benefits?

- Public purpose benefits include the preservation of jobs, the maintenance of tax revenues, the cost avoidance to Farmington of securing a replacement power source and other public purpose benefits that serve the interests of Farmington Electric Utility System (“FEUS”) ratepayers by providing a continuing source of efficient and economic baseload

Carbon Sequestration

- Public purpose benefits also include the acquisition and continuing operation of the Plant by Enchant after June 30, 2022 utilizing advanced Carbon (“CO₂”) Capture Equipment
- CO₂ will be sequestered and shipped by pipeline from the Plant for injection into Permian Basin natural gas wells
- The advanced CO₂ Capture Equipment that Enchant plans to install at the Plant would reduce CO₂ emissions below the limits set by the recently enacted NM Energy Transition Act
- The Sargent & Lundy engineering firm is completing a CO₂ Capture Equipment feasibility study

ARTICLE III: Closing

- The Closing will take place on the Effective Date of the Agreement when the Extender Rights Transfer from Farmington to Enchant takes place

ARTICLE IV: Seller Representations and Warranties

- Farmington has all requisite authority to perform the obligations under the Agreement
- Farmington is transferring the Extender Rights to Buyer “AS IS, WHERE IS” as of the Effective Date
- “[N]o responsibility has been or is assumed by [Farmington] with respect to (i) the condition or state of the San Juan Project; (ii) the compliance of the San Juan Project with any applicable laws or regulations; (iii) the value, expense of operation or income potential of the San Juan Project or the condition, state of repair, compliance, value, expense of operation or income potential of the San Juan Project.”

ARTICLE V:

Buyer Representations and Warranties

- Enchant has the authority to enter into the Agreement and perform its obligations
- No legal proceedings are pending or threatened against Enchant
- Enchant has conducted its own independent due diligence and has been provided adequate access to the personnel, properties, assets, premises, documents and data of the Plant for that purpose

ARTICLE VI: Covenants

What are the binding commitments?

- Enchant and Farmington will cooperate with respect to any public announcements, public statements, press releases or other official communications
- Enchant “acknowledges and agrees that preserving employment for Employees of the [Plant] at a target level mutually agreed with [Farmington] that is consistent with operation of Unit 1 and Unit 4 as of the Effective Date and maintaining the tax base arising from the [Plant] are public purpose benefits....”

Restructured Participation Agreement

- Farmington and Enchant (and potentially other parties TBD) will enter into a Restructured Participation Agreement that
 - will allow Farmington to retain its 5% ownership interest in the Project
 - will implement an ownership and operations structure for the Restructured San Juan Project and
 - will provide Farmington with certain rights and interests with respect to management and operation of power producing assets of the Plant (“GenCo Assets”)

Restructured Participation Agreement

Operating Costs

- Enchant and Farmington will be responsible for their pro rata percentage portion of all costs and expenses for Permits and regulatory approvals required to continue operating the San Juan Project after the Transfer Date
- Enchant will be responsible for all costs and expenses for installation, operation, maintenance and repairs and performance of the CO₂ Capture Equipment, whether arising on, before or after the Transfer Date
- Enchant will be responsible for all costs, expenses, claims and liability related to installation of an interconnection pipeline between the Plant and the CO₂ transmission pipeline for shipments of CO₂ from the Plant to end-user customers

Restructured Participation Agreement

Carbon Capture Equipment

- Farmington will not share in any revenues or be responsible for any liabilities related to the CO₂ Capture Equipment or the generation and distribution and use of CO₂ arising from the CO₂ Equipment
- However, Farmington will have the option to acquire an interest in the CO₂ Capture Equipment under the same terms as other tax equity investors in the CO₂ Capture Equipment
- Enchant will use commercially reasonable efforts to maintain jobs and wages at the Plant consistent with Prudent Utility Practices in order to help preserve tax revenues and other economic benefits of the Plant to the City and the San Juan Region during the Term

Restructured Participation Agreement

Transmission Costs

- Enchant is responsible for costs, claims, expenses and liability related to transmission of power produced by the GenCo Assets to third parties including power purchase agreements with end use customers in proportion to its 95% percentage ownership interest in the San Juan Project under the Restructured Participation Agreement.
- Farmington is responsible for costs, claims, expenses and liability arising from and related to transmission of power produced by the GenCo Assets to the City and any of its Affiliates.

Cost Reimbursement to Farmington

- When the CO₂ Capture Equipment achieves commercial operation, Enchant is obligated to reimburse Farmington for its reasonable legal fees and other transaction related costs and expenses up to \$4 million, which reimbursement will be paid in agreed upon installments over an agreed upon period

Environmental and Decommissioning Obligations

- Enchant is responsible for its respective percentage ownership share of obligations and liability:
 - for compliance with Environmental Laws and any Environmental Claims after June 30, 2022; and
 - under the Decommissioning and Trust Funds Agreement, which provides the methodology for planning, approving and funding required in connection with the closure of the Plant

Mine Reclamation Obligations

- Enchant will assume its respective share of obligations under the existing Amended and Restated Mine Reclamation and Trust Funds Agreement
- The obligations and liabilities that Enchant will assume and accept will be limited to the funding of its respective share of certain reclamation trusts as restated and reaffirmed in a new Second Amended and Mine Reclamation Agreement

New Coal Supply Agreement and New Coal Combustion Residual Disposal Agreement

- Enchant will use commercially reasonable efforts to enter into a New Coal Supply Agreement and a New Coal Combustion Residual Disposal Agreement that will set forth the rights, requirements and obligations of Enchant regarding the supply of coal to the Restructured San Juan Project and the disposal of ash after expiration of the existing Coal Supply Agreement and the Coal Combustion Residual Disposal Agreement between Westmoreland Coal Company and PNM

Operations, Capital Projects and Improvements

- Enchant's assumption and undertaking of ownership and operations of the Restructured San Juan Project will involve certain capital projects, Permits, improvements and updates and the installation of the CO₂ Capture Equipment and other physical infrastructure changes at the San Juan Project ("Project Improvements")
- The operations and Project Improvements as they relate to the CO₂ Equipment will be at the sole cost and expense of Enchant, and any liabilities and/or other obligations related to such operations and Project Improvements will be the sole responsibility of Enchant

Transmission

- Enchant's assumption and undertaking of ownership and operations of the Restructured San Juan Project will involve matters related to the transmission of electricity generated by the Restructured San Juan Project including authorizations, approvals, and contractual and other rights, obligations and privileges related to transmission

Farmington Rights to Electrical Power

- During the 13 year period beginning on the Transfer Date, Farmington will annually receive electrical power generated by the GenCo Assets and delivered to FEUS at an amount not to exceed Farmington's proportional ownership interest in the GenCo Assets ("Power Amount")
- To help protect FEUS customers from rate increases, Farmington will receive the Power Amount at a Cost Cap: the cost per MWh equal to the lesser of (a) the actual all-in cost of such power calculated on an annual dollar per MWh basis including, without limitation, operation and maintenance (O&M), fuel and capital expenses and debt service, and (b) eighty percent (80%) of the average power production cost of the San Juan Project calculated on an average annual dollar per MWh production cost basis during the six (6) year period from 2013 to 2018

Farmington Reversionary Rights

Farmington will automatically receive the Extender Rights back from Enchant (and any rights transferred to Enchant in connection with the restructuring of the San Juan Project) for no additional cost to the City in the event either:

- Enchant does not obtain financing that is sufficient to undertake the capital projects, changes, improvements and updates required to operate the San Juan Project utilizing the Carbon Capture Equipment by June 30, 2021, subject to extension by mutual agreement of Farmington and Enchant based on financial market conditions including performance milestones related to obtaining financing; or
- all of the Transaction Agreements and the other documents and actions required in connection with the Restructured San Juan Project are not negotiated, finalized, executed and/or completed by June 30, 2021, provided that the deadlines will be extended day-for-day for Force Majeure circumstances beyond the control of either Party

Enchant Reversionary Rights

- Enchant has reversionary rights to the Extender Rights, and the City will automatically receive back from Enchant the Extender Rights and any rights transferred to Enchant in connection with the restructuring of the San Juan Project contemplated hereunder, for no additional cost to Enchant except that each Party is responsible for its respective transaction costs including, without limitation, legal fees

ARTICLE VII: Post-Closing Obligations

- Certain actions will be required after the Extender Rights transfer to Enchant in order to complete the transfer of ownership and restructuring of the San Juan Project, including the execution and delivery of the Transaction Agreements
- Enchant will use commercially reasonable efforts to negotiate, finalize and execute all Transaction Agreements post-Closing

Transaction Agreements

The Transaction Agreements required post-Closing include:

- Restructured Participation Agreement;
- Transition Operating Agreement;
- Amended and Restated Decommissioning Agreement;
- Second Amended and Restated Mine Reclamation Agreement;
- Non-Extender Transfer Agreements;
- New Coal Supply Agreement;
- New Coal Combustion Residual Disposal Agreement between Enchant and Westmoreland Coal Company and
- any other agreements with the Non-Extenders and the Exited Participants that may be required to effectuate the San Juan Project restructuring.

Post-Closing Actions

Certain post-Closing action items for Enchant include:

- issuance of the final Sargent and Lundy Report
- preparing the market feasibility estimates and financial projections for the Restructured San Juan Project
- completing any environmental studies required by the Transaction Agreements; and
- completing the transfer of any parcels of Real Property or easements or rights-of-way required by Enchant for operation of the San Juan Project

ARTICLE VIII: Indemnification

- Subject to the limitations and other provisions of the Agreement, the representations and warranties will survive the Closing and will remain in full force and effect until the date that is thirty six (36) months after the Effective Date (“Survival Period”). Any claim for breach of any representation or warranty of City or Enchant will be brought, if at all, within the Survival Period or thereafter be barred

Indemnification by Farmington

- Farmington will indemnify Enchant against, and will hold Enchant harmless from and against, any and all tort claims imposed upon Enchant resulting from the actions or omissions of Farmington subject to the limitations of liability pursuant to Sections 41-4-1 through 41-4-30 of the New Mexico Statutes Annotated

Indemnification by Enchant

- Enchant will indemnify Farmington against, and will hold Farmington harmless from and against, any and all losses incurred or sustained by, or imposed upon, the City based upon, arising out of, with respect to or by reason of:
 - any inaccuracy in or breach of any of the representations or warranties of Enchant contained in the Agreement; and
 - any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Enchant pursuant to the Agreement

Deductible

- The Indemnifying Party will not be liable to the Indemnified Party for indemnification until the aggregate amount of all Losses in respect of indemnification exceeds \$50,000 per occurrence (“Deductible”), in which event the Indemnifying Party will only be required to pay or be liable for Losses in excess of the Deductible. With respect to any claim as to which the Indemnified Party may be entitled to indemnification, the Indemnifying Party will not be liable for any individual or series of related Losses which do not exceed \$50,000, which Losses will not be counted toward the Deductible

Indemnification

- If Farmington is the Indemnifying Party, Farmington's liability for all Losses for tort claims will be the maximum amount permitted under the New Mexico Tort Claims Act
- If Enchant is the Indemnifying Party, Enchant's liability for all Losses will be equal to the amount that would be paid by Farmington if it were the Indemnifying Party and the claim were subject to the New Mexico Tort Claims Act. Any claims related to tax obligations, Excluded Liabilities and Assumed Liabilities will not be subject to the Deductible

Indemnification

- No punitive damages
- In no event will any Indemnifying Party be liable to any Indemnified Party for any punitive, incidental, consequential, special or indirect damages including, without limitation, loss of future revenue or income, loss of business reputation or opportunity related to the breach or alleged breach of the Agreement, or diminution of value or any damages based on any type of multiple

ARTICLE IX: General

How are Disputes Resolved?

- The Parties will use good faith efforts to meet and to negotiate a resolution to any dispute within thirty (30) days thereafter. Any dispute not resolved by the Parties during the aforesaid period will be submitted by the disputing Party to nonbinding mediation according to the then current JAMS International Mediation Rules. The mediation will be held in a location the Parties mutually agree in writing. If the Parties are unable to resolve the dispute within ninety (90) days after the first mediation meeting, then either Party or both Parties may pursue resolution of the matter through the courts
- New Mexico is the governing law
- Venue is in Farmington courts
- Non-Recourse

QUESTIONS